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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/882,123  | 06/15/2001  | David P. Huang       | 1880                | 8640             |
| 35157   | 7590        | 08/11/2005           | EXAMINER            |                  |
| NATIONAL STARCH AND CHEMICAL COMPANY<br>P.O. BOX 6500<br>BRIDGEWATER, NJ 08807-3300 |             |                      | TRAN LIEN, THUY     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1761                |                  |

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/882,123             | HUANG ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Lien T. Tran           | 1761                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-7, 11-16 and 20-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2-7, 11-16 and 20-31 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

Art Unit: 1761

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20: Lines 1-5 are unclear; the way the claim is written, it indicates that the dough comprises the properties recited, not the starch.

Claims 2-7, 11-12, 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cremer ( 410902).

Cremer discloses a process of making a dough with a binder comprising an a cold-water dispersible starch. Dehydrated potatoes and binder are combined with water to produce a dough. The dough is formed into pieces and fried. The binder gives a better handling properties to the potato pieces; they have greater mechanical strength and can be handled with less breakage between the formation of the piece and frying. The cold-water dispersible starch is made from starch of ordinary amylose content by drying an aqueous slurry or paste on steam-heated rolls or in a spray-dryer. One of the starch that can be used in potato starch that is dried on a drum dryer. (see column 2 lines 35-42, col. 4 lines 25-50 and example 1).

The properties disclosed in 2-4, 11-12, 20, 22-23,27 are inherent in the Cremer product because the product is a dough which contains an amylose containing starch and the starch is obtained from potato. With respect to the steps of claims 11, 20, Cremer discloses forming a slurry or paste on steam-heated rolls ; this cooks and dries the starch. The starch can also be prepared on a drum dryer which cooks and dries the starch slurry. The amylose-containing starch is incorporated into the dough. The

pieces prepared from the dough are fried which meet the limitation of claims 7, 26. The dough as set forth in example 1 does not contain any fat; thus, it is a low fat dough which meets the limitation of claim 21.

Claims 13-16, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cremer in view of Michell et al.

Mitchell et al discloses a process for preparing a pregelatinized modified starch. The starch is prepared using drum drying. Mitchell et al teach the parameters used to prepare the starch using drum drying and the solid level used in drum drying ( see col. 1 line 65 through col. 2 line 1, col. 2 line 60 through col. 3 line 12).

Cremer does not disclose the solvent is water, the pH, the concentration and grinding into particles.

Cremer discloses forming a slurry. It would have been obvious to mix the starch with water to form a slurry because water is commonly used to disperse the starch. As to the pH and concentration, Cremer teaches drum drying is used; it would have been obvious to one skilled in the art to use the drum drying parameters as taught by Mitchell et al to prepare the starch to use in the Cremer process. It would also have been obvious to grind the starch as taught by Cremer so that the starch is in the size sufficient to use as binder in the dough.

In the response filed 2/2/05, applicant submits a 132 declaration to show that the dough of Cremer does not have the extension claimed because the extension of the dough cannot be measured. The declaration is not found to be persuasive. The declaration recites a potato blend was made in according to example 1 of Cremer.

However, the declaration does not set forth exactly the steps that were done.

Difference in processing steps might lead to different properties which cannot be determined. For example, the declaration states each material was blended for one minute. Example 1 of Cremer requires that the dough is allowed to stand undisturbed for ten minutes before it is processed; it is not stated in the declaration if this is done.

Example 1 also requires that the binder is blended in a ratio of 1:4 with dehydrated potato granules to form a potato product and one part of the product is mixed with two parts of water to form a dough. The declaration does not state if this exact ratio was used. The dough in Cremer is formed into pieces through an extruder. The dough must have sufficient handling ability to be lifted and placed in an extruder to form the pieces. The declaration is also not persuasive because the comparative example used is not closed to the product in the prior art. The dough product of Cremer is a potato dough; however, the declaration chose a dough comprising masa harina for comparative purpose. The specification discloses the amylose-containing starches can be used in a variety of systems including potato flour, potato flakes, potato granules. A more persuasive showing would be the product of Cremer against the claimed product containing potato flakes, potato granules or potato flour. A dough comprising masa harina has the claimed extension; however, it cannot be determined from the declaration if the dough containing potato flour, potato flakes or potato granules will have the claimed extension. The showing is not commensurate in scope with the claims because it is directed to a dough containing specific material while the claims are directed to any dough containing the amylose-containing starch. The dough of Cremer

contains amylase-containing starch and the starch is prepared in the same way as the claimed starch; thus, the properties are inherent in the Cremer dough and the declaration has not presented sufficient evidence to overcome the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 7, 2005

  
LIEN TRAN  
PRIMARY EXAMINER

Group 1707